

### **REMARKS/ARGUMENTS**

In view of the amendments and remarks herein, favorable reconsideration and allowance of this application are respectfully requested. By this Amendment, claims 1, 9, 15, 19-20, 23, 25, 27, and 34-37 are amended, claims 38-40 are cancelled, and claim 41 is added. Thus, claims 1-37 and 41 are pending for further examination.

#### **Allowable Subject Matter**

Applicant notes with appreciation the indications (1) that claims 9, 15-16, 19-20, 23, 32-33, and 39 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 101 and in independent form to include all of the limitations of their respective base claims and any intervening claims, and (2) that claims 38 and 40 would be allowable if rewritten in independent form to include all of the limitations of their respective base claims and any intervening claims.

Applicant has amended claims 1 and 34-37 so as to obviate the § 101 rejection. In particular, without acquiescing to the propriety of the § 101 rejection of claims 1-23, 29-37, and 39, Applicant has amended claims 1 and 34-37 to explicitly recite a PAP device. As such, the claims are clearly tied to a particular machine and also clearly result in transformations in how the specifically claimed PAP devices operate. Accordingly, Applicant respectfully submits that claims 1-23, 29-37, and 39 pass the so-called “machine-or-transformation test” of *In re Bilski*. Thus, the § 101 rejection is now believed to be moot.

Claims 9, 15, 19, 20, and 23 have been rewritten in independent form, incorporating all of the limitations of their respective base claims and any intervening claims and obviating the § 101 rejection (see above). Thus, these claims (and their dependents) are believed to be in condition for allowance.

Additionally, without acquiescing to the propriety of the §§ 102 and 103 rejections based on Watson (U.S. Patent No. 4,777,962) alone or in combination with Hoffman (U.S. Patent No. 6,287,264), Berthon-Jones (U.S. Patent No. 6,092,665), and/or Rapoport (U.S. Patent No. 5,335,654, Applicant has amended claims 1, 25, and 27 to incorporate the features of allowable claims 39, 40, and 38. Thus, claims 1, 25, and 27 (and their respective dependents) are believed to be in condition for allowance.

In view of the above, reconsideration and withdrawal of all outstanding rejections are respectfully requested.

#### **New Claim 41**

New claim 41 has been added to seek protection for further originally disclosed subject matter. As the Office Action acknowledges, the prior art of record, alone and in combination, does not disclose or suggest classification between obstructive and central breathing disorders being based on variables and/or mathematical operations consisting essentially of the differentiating, as specifically called for in claim 41. As such, claim 41 should be allowable over the prior art of record for at least this reason.

#### **Conclusion**

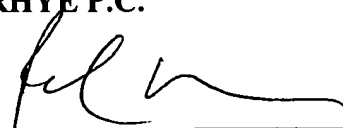
In view of the above amendments and remarks, Applicant respectfully submits that all the claims are patentable and that the entire application is in condition for allowance. Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number below.

MADAUS et al.  
Appl. No. 10/531,476  
September 9, 2009

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_

  
Paul T. Bowen  
Reg. No. 38,009

PTB:jr  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100